

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

LEO JOURNAGAN CONSTRUCTION
COMPANY, INC.

PLAINTIFF

vs.

Civil No. 05-3025

MOUNTAIN HOME CONCRETE, INC.
And TWIN LAKES PROPERTIES, INC.

DEFENDANTS

PRETRIAL DISCLOSURE SHEET of LEO JOURNAGAN CONSTRUCTION
COMPANY PURSUANT to F.R.C.P. 26(a)(3)

1. Identity of the party submitting information.

The Plaintiff, Leo Journagan Construction Company, Inc.

2. The names, addresses, and telephone numbers of all counsel for the party submitting information.

Christy Comstock
Jones & Harper
21 W. Mountain Street, Suite 300
Fayetteville, Arkansas 72701
email: ccomstock@joneslawfirm.com

3. A brief summary of claims and relief sought.

Plaintiff Leo Journagan Construction Company, Inc. ("Journagan") of Springfield, Missouri, filed this action on April 21, 2005, naming Defendants Twin Lake Properties, Inc. and Mountain Home Properties, Inc., both of Mountain Home, Arkansas. Journagan has asserted numerous claims against Defendants, each of which arises out of contractual and business relationship between Journagan and Twin Lakes Properties. Plaintiff received notice of a lease termination from Twin Lakes Properties and was evicted from property it leased on April 6, 2005. Plaintiff has asserted claims for

conversion, ejectment, trespass, unlawful detainer, and unjust enrichment. Plaintiff seeks damages for conversion of inventories, or alternatively, ejectment of the trespasser -- whether it is Mountain Home Concrete or an alternate corporation formed -- and reinstatement of the lease for the remainder of the lease period.

4. Prospects for settlement.

The prospects for settlement are fair; the parties have attended a Settlement Conference with Magistrate Judge Jones.

5. The basis for jurisdiction and objections to jurisdiction.

Jurisdiction is based upon 28 U.S.C. §1332. Plaintiff has no objections to jurisdiction.

6. A list of pending motions.

(a) Plaintiff anticipates filing one or more motions in limine.

7. A concise summary of the facts.

Leo Journagan Construction Company is headquartered in Springfield, Missouri and is engaged primarily in the construction of highways in Missouri and occasionally, in Arkansas. In connection with and in support of its construction activities, Journagan engages in the quarrying of aggregate materials of various sizes and qualities, referred to by their attorney as rocks. On October 24, 1994, Twin Lakes Properties, Inc. ("Twin Lakes"), by and through its President, Bill Starkey, entered into a written lease with Journagan whereby Twin Lakes leased Journagan a Quarry in Baxter County, Arkansas which was under the control and "lawful title" of Bill Starkey. By letter of April 6, 2005, Twin Lakes – through counsel David Osmon – notified Journagan that it was terminating the Lease pursuant to Paragraph 16 of the Lease. Twin Lakes' letter did not set forth which event excusing the performance of Journagan was being relied upon for cancellation of the Lease. There were no conversations or discussions between Bill Starkey and Journagan. The letter then provided that Journagan had "until May 1, 2005, to remove all of its equipment from the quarry property" as well as "all barrels, containers, and any substances controlled by the Environmental Protection Agency." This notice provided less than forty-five (45) days notice and in addition to not setting forth the grounds for cancellation, it offered no opportunity to correct or cure the grounds for cancellation. Twin Lakes then permitted a third party, Mountain Home Concrete and/or North Central Arkansas Quarries to enter onto the premises and engage in quarrying activities.

8. All proposed stipulations.

Counsel has entered into no stipulations at this time.

9. The issues of fact expected to be contested.

- (a) The termination of the parties' lease agreement.
- (b) The identity of the third party trespasser.
- (c) The quantity of inventory on the Quarry premise.
- (d) The fair market of the inventory on the Quarry premise.
- (e) The damages to which Plaintiff is entitled.

10. The issues of law expected to be contested.

None at this time.

11. A list and brief description of exhibits, documents, charts, graphs, models, schematic diagrams, summaries, and similar objects with may be used in opening statement, closing argument, or any other part of the trial, other than solely for impeachment purposes, whether or not they will be offered in evidence. Separate designate those documents and exhibits which the party expects to offer and those which the party may offer.

Plaintiff expects to offer into evidence:

- 1. Lease Agreement, October 1994
- 2. Termination Letter from Twin Lakes Property, April 6, 2005
- 3. Journagan Construction, Audited Summary of Items on Hand and Valuation as of March 31, 2005
- 4. Mountain Home Quarry Inventory Status

5. Mountain Home Quarry Current Inventory on Hand
6. Conversion from Cubic Yards to Tons for Aggregates
7. Audited Inventories Mountain Home Quarry for 2000, 2001, 2002, 2003, 2004 and 2005
8. Incorporation documents for North Central Arkansas Quarries
9. All Exhibits introduced by Defendants.
10. Summaries reflecting fair market prices for Aggregates in 2005

12. The names, addresses and telephone numbers of witnesses for the party. Separately identify witnesses whom the party expects to present and those whom the party may call. Designate witnesses whose testimony is expected to be presented via deposition and, if not taken stenographically, a transcript of the pertinent portion of the deposition testimony.

The Plaintiff intends to call the following witnesses:

Alan Journagan
Leo Journagan Construction Company
3003 E. Chestnut Expressway, Suite 1200
Springfield, MO 65802
417.869.7222

Bryan Holt
Leo Journagan Construction Company
3003 E. Chestnut Expressway, Suite 1200
Springfield, MO 65802
417.869.7222

Terry Maples
Leo Journagan Construction Company
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Charles McFarland

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Noel Kerans
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417.869.7222

Jesse Vestal
Leo Journagan Construction Company
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Springfield, MO 65802
417.869.7222

Kenneth W. Cotter
Consolidated Land Services
2113 Highway 62 East #2
Mountain Home, Arkansas 726532
870.425.6161
Steve Miller
Springfield Scale Service
417.732.8861

Rob Rebman
Roberts, McKenzie, Mangan & Cummings
Certified Public Accountants
4035 S. Fremont
Springfield, MO 65804
417.883.5348

Bill Starkey , Defendant

Mike Dilbeck, Defendant

13. The current status of discovery, a precise statement of the remaining discovery and an estimate of the time required to complete discovery.

Discovery is completed.

14. An estimate of the length of trial and suggestions for expediting disposition of the action.

It is anticipated that the trial will take 2-3 days.

15. Signature of attorney.

By: _____/s/ Christy Comstock_____
Christy Comstock (92246)
JONES & HARPER
21 West Mountain, Suite 300
Fayetteville, AR 72701
(479) 582-3382
Fax (479) 587-8189

16. Proof of service.

See attached.

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that she caused a copy of the foregoing to be served on the following person via electronic service and by U.S. Mail, properly addressed, on this 21 day of November 2005:

Mr. David L. Osmon
Mr. David L. Ethredge
Osmon & Ethredge, P.A.
119 East 6th Street
Mountain Home, Arkansas 72653

_____/s/ Christy Comstock_____
Christy Comstock